

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TELEFONOS PUBLICOS DE PUERTO
RICO, INC.

and

Case 24-CA-9465

RICARDO SANTOS ORTIZ, An Individual

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Fernandez, Esq., for the General Counsel.
Anibal Lugo Miranda, Esq. and Janice
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Offices), of San Juan, Puerto Rico, for
the Respondent.*

DECISION

STATEMENT OF THE CASE

EARL E SHAMWELL JR., Administrative Law Judge. This case was heard before me in San Juan, Puerto Rico, on November 4-7, 2003, pursuant to an original charge filed by the Charging Party, Ricardo Santos Ortiz, against Telefonos Publicos de Puerto Rico, Inc. (the Respondent) on December 6, 2002; Santos Ortiz filed an amended charge against the Respondent on January 31, 2003. On June 30, 2003, the Regional Director for Region 24 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing against the Respondent.

The complaint alleged essentially that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by interrogating, threatening with unspecified reprisals, and suspending and discharging certain named employees because they engaged in concerted protected activities and by interfering with said employees' exercise of rights guaranteed them under the Act.

On July 14, 2003, the Respondent filed its answer to the complaint, generally denying the commission of any unfair labor practices and asserting certain defenses to the complaint allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction—The Respondent's Employer Status

5 The Respondent, a Puerto Rico corporation with an office and place of business in Carolina, Puerto Rico, has been engaged in the business of installing and maintaining public coin-operated telephones throughout the Commonwealth of Puerto Rico. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Unfair Labor Practice Allegations.

A. Background Facts

15 The Respondent, a certified telecommunications company, provides public telephone service throughout the Commonwealth of Puerto Rico. During the times material to the litigation, the Respondent had about 3000 coin-operated “pay” phones installed around the island; for example, at shopping centers, hospitals, and laundromats.¹ The Respondent's phones are located on various routes and territories established by the Company throughout the island.

20 The Respondent maintains a work force of around nine installer/collector service technicians (techs or technicians) to service its telephones. Technicians work from 6 a.m. to 3 p.m. Monday through Friday. The Respondent does not conduct business on the weekends. 25 The technicians' main responsibility is collecting telephones on their routes on a daily basis. Some of the assigned routes are located in high crime neighborhoods. Accordingly, phones in such areas are subject, with some frequency, to unauthorized removal, vandalism, and theft. Techs' assignments include repairing and replacing damaged phones. The following describes the technicians' typical workday and the procedures followed by the Company regarding the collections of phones.

30 Technicians report to work at 6 a.m. and once admitted by a supervisor to the “vault,” a lockable and camera-protected concrete/cinder block room on the premises, are given a copy of the day's route summary report listing the phones that require not only collecting but also possible repair or other servicing.² The route summary report lists each telephone's location (by 35 site, address, and city), the amount of uncollected coins in the individual phone as indicated by a computerized polling system and any identifiable problems with a phone for which a “trouble ticket” is issued. The Respondent's management prepares the summary report a day (or more) before and, based on the amounts recorded by the computer in the phones' cash boxes, 40 determines which phone would be collected on any given day.

After receiving the summary report, the technician is then provided with a ring of keys, which includes a key for each telephone to be collected that day and a corresponding number of

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¹ The material time frame included calendar year 2000. It should be noted that the Respondent's telephones accept credit or phone cards to complete calls, but this aspect of the Respondent's business is not pertinent to the instant case.

50 ² GC Exh. 2, a photograph, depicts the entrance to the vault; GC Exh. 5 is a copy of a typical route summary report form for September 18, 2002, for a route covering the San Juan, Santurce and Aux Mutuo areas of Puerto Rico.

empty cash boxes which will replace the full boxes taken from the individual phones.³ The keys to all phones are maintained in the vault on a large peg board that is secured by a lockable metal cover.⁴ In practice, the keys, the assembled key ring, and the key to the key ring itself are kept in the control and possession of the Respondent's supervisors and individual workers assigned to the vault room.

At the time the technician receives his keys, he and a supervisor complete a cash box inventory control form for the day's collection.⁵ This form notes the number of keys and empty cash boxes the technician receives in the morning and the number of full boxes, empty boxes, and keys he returns with in the afternoon. These amounts are counter-signed by both the technician and his supervisor in the morning and upon the technician's return in the afternoon.

When a technician reports to a phone site to collect a phone, he is required to complete a key log sheet.⁶ On this form, the technician records the telephone number associated with each phone, the amount the phone's internal computer indicates is in the phone's cash box (the so-called "bypass" amount), and the serial number of the lock on the cash box to be removed and the similar number of the lock to be installed on the replacement cash box. The locks on the cash boxes are not operated by a key. Rather, after engagement, these locks may only be removed by cutting, which effectively destroys them; they cannot be reused or repaired and are discarded by the Company.⁷

At the end of his day, the technician returns the full and locked cash box to the vault where his supervisor, as noted, records the number of full boxes returned. The technician does not participate in the actual counting of the amounts in the returned cash boxes; that is left to the vault room personnel.

The Respondent's telephones appear to be well made and very sturdy, and are designed to resist tampering and theft. However, they are not completely theft and vandal proof. For instance, thieves have been known to stuff the phones' coin return slot with cloth or wire so that the coin return mechanism is disabled. The thief will after a time return to the phone, remove the cloth (or other obstruction) and retrieve the trapped coins. Also, it is possible for a dishonest technician to rig a phone so that the coins do not register in the phone and make off with these unaccounted for coins. However, it would appear from the credible evidence of record that in order to gain access to the cash box or, as opposed to merely intercepting coins before they drop in the box, one would have to use a key to open the phone

³ See GC Exh. 8, a photograph depicting a key ring and keys to individual telephones. Each individual key has an identification tag associating it with a given telephone. See GC Exh. 7, a photograph which depicts a collection of cash boxes of the type installed on the Respondent's phones.

⁴ See GC Exh. 3, a photograph depicting the wall on which the keys are hung. The picture shows how this wall of keys is protected by a closeable and lockable metal cover.

⁵ See GC Exh. 4, a representative cash inventory control form for September 16-18, 2002. Note that the form also records any "test call" money, usually 25 cents provided by the Respondent to the tech to determine if a phone is operating properly.

⁶ See GC Exh. 9, a copy of the Respondent's key log sheet for September 17, 2002. The technician gains access to the computer by punching in a code—a bypass code—provided by the Company, which reports the amount of coins in the cash box. All technicians use the same bypass code on a collection run.

⁷ See GC Exh. 10, a photograph of a cash box lock intact on a cash box, and also GC Exh. 11, an actual used cash box lock with serial numbers.

itself to remove the cash box. While the wire lock on the cash box can be easily cut, as a practical matter one would have to demolish the phone to gain access to the cash box without a key.⁸

5 This is not to say that irregularities in the collection of the Respondent's phones occur only because of theft or vandalism. Some irregularities evidently occur through possible glitches in the computer. In fact, the Company's experience with collections indicates that discrepancies in the amounts shown by the computer and the actual collections occur almost
10 everyday. However, as a matter of policy, the Company only investigates discrepancies (plus or minus) greater than \$10.00.

The three individuals named as discriminatees in the complaint, Oscar Sanchez, Angel Olivo, and Edwin Lopez, were hired as technicians and performed their duties generally as
15 outlined above.

The Respondent discharged Sanchez on about July 11, 2002.⁹ Olivo and Lopez were first suspended on September 19 for 10 workdays; on October 1, 2002, the Respondent officially terminated both men.

20 *B. The Substantive Complaint Allegations*

1. The July 8, 2002 alleged interrogation of Sanchez; his July 11, 2002 discharge

25 The complaint alleges that on or about July 8, 2002, the Respondent's general manager, Ralph Ciezar,¹⁰ interrogated and threatened employees, including Sanchez, with unspecified reprisals because they engaged in protected concerted activities. Sanchez's discharge on July 11 is also alleged to be unlawful. Sanchez testified at the hearing and related his version of events transpiring on July 8 and 11.

30 Sanchez stated that he began working for the Respondent as a service technician on October 19, 1999; his duties included collecting, repairing, and cleaning about 50 pay phones situated along his assigned route which covered Cantano, Bayamon, Guaynabo, Santurce, and Los Piedres, Puerto Rico. Sanchez stated that he serviced around 40-50 phones daily. He
35 said his last day of employment was July 11, 2002, on which date he was notified that he was discharged. At the time of his discharge, his immediate supervisor was Juan Burgos.¹¹

40 ⁸ See GC Exh. 13, a photograph of one of the Respondent's telephones showing a partially removed cash box. The cash box is protected by a lockable cover. As is observable, the depicted telephone, like most on the average street corner, is black and made of steel or other heavy metals.

45 ⁹ See GC Exh. 21, Sanchez's termination letter dated July 11, 2002. Sanchez testified that his last day of work was July 11. Whether his last day was the 11th or 12th is not significant. I will use the letter's date as the termination date.

¹⁰ The Respondent admits that Ciezar's duties and responsibilities as its general manager coincide with the Act's definitions of supervisor and/or agent under Section 2(11) of the Act.

50 ¹¹ The Respondent admits that Burgos is a supervisor and/or agent within the meaning of Section 2(11) and (13) of the Act. Sanchez noted that Burgos only supervised him for about a month.

Sanchez described the circumstances and events that preceded his discharge.

Sanchez stated that about a month before he was discharged, the Company acquired another telephone company whose phones had to be converted to the Respondent's system. According to Sanchez, the conversion entailed a doubling of the workload for the technicians because the Company wanted the work accomplished in a very short period. As a consequence, the management would only reluctantly approve vacations, and then for no more than 3 days at a time.

Sanchez said that the work conditions were becoming intolerable and led to the employees discussing them collectively. Sanchez said that the technicians met on two occasions to discuss work-related issues. According to Sanchez, the first such meeting took place in June at a liquor store where the workers often gathered to socialize after work.

According to Sanchez, employees Sandro Matos, Ariel Bertram, Juan Burgos, Angel Olivo, Edwin Lopez, and others whose names he could not recall met at the liquor store and discussed work conditions and the need to establish their own union or bring in an existing union to represent them.

Sanchez said that the second meeting took place on July 8, 2002, this time in the company parking lot in the morning just before the technicians punched in for work. Again, according to Sanchez, Juan Burgos and fellow technicians Matos, Lopez, Olivo, Michael Sanchez, Luis Burgos, and he were present. It was Luis Burgos who informed the group that one of his parents was familiar with unionization and was advising them about what must be done to secure union representation.

Sanchez said that the group discussed vacations, with the major complaint being that the Respondent allowed only 3 days' vacation at a time when they were entitled to more time.¹² Sanchez said the technicians also discussed a wage increase that had been promised them if they had completed the phone conversation before July 4, which they did. However, the raise had not been granted.

Sanchez said the July 8 meeting ended abruptly because Ciezar came on the scene.

Sanchez stated that after finishing his route that same day, Ciezar called him to his private office. There, according to Sanchez, Ciezar told him that if he did not like the conditions of his employment at the Company, he could go to another company or to the local labor department in Hato Rey (a section of San Juan). The meeting ended with nothing more being said or discussed.

Sanchez said that the next day (July 9) his supervisor, Juan Burgos, advised him that his requested vacation for July 20-23 (his birthday) was being suspended. According to Sanchez, Burgos seemed to be reading from a paper that dealt with the suspension of his vacation. Sanchez said that he asked Burgos what was happening and Burgos said he (Burgos) did not have to give him any explanation.

¹² Sanchez cited his own example, saying that when he was fired, he had 26 days' vacation due him which was acquired over his approximately 33 months with the Respondent. Sanchez stated that over this period he had been able to take only 6-7 days of vacation. The Respondent disputes Sanchez on this point.

Sanchez said that on July 11, he was told that he was discharged and given a letter that advised him of the decision by the Company to terminate him but did not give any reasons therefor.¹³ Sanchez stated that he had not received any discipline from the Company. He specifically denied being even verbally reprimanded by Ciezar because of a complaint from a coworker and denied being verbally reprimanded by Carlos Ortiz, the Company's system information manager, for low production or discrepancies in collections on his route. Sanchez further denied that he had "trouble" with Juan Burgos and specifically denied calling him a "son of a b----" or having any physical confrontations with him. Sanchez stated that he received a wage increase in December 2001 (and at other times) and was named employee of the month at that time for which he received direct praise from Ciezar who had approved other raises for him.

2. The suspension and discharge of Angel Olivo and Edwin Lopez
on September 19 and October 1, 2002

a. Olivo's suspension and discharge

Olivo testified that he worked as a service technician for the Respondent since June 1999; he was discharged on October 1, 2002. Olivo stated that his direct supervisors during his tenure with the Company were Juan Burgos, his immediate supervisor, and Carlos Ortiz who was in charge of the automated and other operations of the Company.¹⁴

Olivo said that he was assigned around 300 telephones on a route that covered San Juan, Santurce, and part of Hato Rey and Carolina; he claimed to have serviced around 30-40 telephones per day.

Directing himself to his last months with the Company, Olivo stated that he was outspoken about working conditions at the Company and related two informal meetings he participated in with other technicians where various work-related problems were discussed. According to Olivo, around the beginning of July 2002, around 4 p.m. after work, he and a number of technicians met at a store in Carolina.¹⁵ According to Olivo, there the employees discussed vacations, Ciezar's constant accusations of stealing from the telephones, a promised but unrealized raise for replacing another acquired company's telephones, scheduling issues, and overtime pay which they were never given.

Olivo stated that the primary reason for this meeting was the promised raise, which the employees felt entitled to because they had timely replaced the phones in question; the other topics were raised in this context. Olivo stated that the discussions eventually turned to seeking

¹³ As noted, Sanchez's letter (GC Exh. 21) notified him of his termination. It does not provide any reasons; but merely informs him of severance pay due him under Puerto Rico law; a check for salary up to July 15, 2002, and his vacation pay and Christmas bonus. The letter is signed by Juan Burgos and Carlos Ortiz.

¹⁴ According to Olivo, he was a supervisor of the technicians until December 2001, when Juan Burgos was promoted and replaced him. Olivo said he viewed this as a justified demotion. Ortiz was in charge of the computerized system that "polled" the phones to determine the amount of coins in the machines as well as any problems with them. According to Olivo, the computers allowed the Company to call every phone in the system, which in turn caused the creation of the aforementioned route summary reports.

¹⁵ Olivo named Edwin Lopez, Juan Burgos, Oscar Sanchez, Luis Burgos, and some others whose names he could not recall as being present.

the assistance of a union to represent the technicians because of the problems they were having on the job.

Olivo also related a second employee meeting that occurred about a week later in the company parking lot around 5:45 a.m., just before the technicians were to punch in. Olivo stated that while he could not recall all of the participants by name, but basically all (nine) of the techs were there.¹⁶ According to Olivo, the main point of the meeting was to discuss the raise they had been promised. Olivo said that he told the group that they needed a union to represent them before they were all fired by the Company.

Olivo also stated that later that same day, around 3 p.m., Juan Burgos told him he was to see Ciezar. Olivo said he reported to Ciezar's office as directed and, in the presence of Carlos Ortiz, Ciezar first asked him what was happening. Ciezar then told him if he were not happy with his job or salary that he could go to the Labor Department and seek vacations or a raise. This meeting lasted about 5–10 minutes.

Olivo related the circumstances leading to his termination. According to Olivo, on September 18, he was called by Juan Burgos to a meeting with Burgos, Ciezar, and Ortiz around 3 p.m., after completing his route. According to Olivo, Ciezar told him that there were two pay phones on his routes that had cash box discrepancies and asked why he (Olivo) had the keys for these phones. Olivo said he was shown a document¹⁷ by Ortiz that indicated that two telephones were short; that is the computer polling indicated that one phone was short \$19.30 and the other \$32.85 and that the phones had been collected on September 16, 2002.

Olivo stated that he told Ciezar and Ortiz that he did not know why the money was missing. Although he conceded that discrepancies were a fact of daily life for technicians, Olivo said that he told the two supervisors that there was no way for a technician to take money undetected from a cash box.¹⁸

Olivo explained that he was familiar with the location of the two phones in question as they were on his route, were "good phones"—generated money rapidly—which he collected either weekly or every other week. Olivo recalled that on September 16, Burgos, following the usual procedure, gave him the keys for these two phones, but he (Olivo) had not himself scheduled them the day before for collection. Olivo, however, could not recall if he himself had requested that these good money-makers be placed on his list. However, he acknowledged

¹⁶ Olivo was able to name Edwin Lopez, Juan Burgos, Ray Rivera, Michael Sanchez, and Ariel Bertram as participants at the second meeting.

¹⁷ See G.C. Exh. 14, which purports to be a Collection Report that included polling data and coins collected and the differences or discrepancies between the two. Olivo said that he did not have access to the report and did not use one like it in his daily work. Accordingly, he was unable to attest to the accuracy of the data contained therein.

¹⁸ Recall the cash box lock, which Olivo stated secured the cash box and once opened was unusable. Olivo noted that vandalism and technical problems in the Respondent's automated system often produced discrepancies which could manifest in there being more or less money in the cash box than that which the computer polling indicated. Olivo also admitted that he had discrepancies prior to September 18; but when these occurred, a trouble ticket was issued and the telephone was checked out. Olivo implied that he had never been questioned about prior discrepancies.

that the keys to these two phones were put on his ring for the September 16 collections by Juan Burgos.¹⁹

Olivo noted that he was not told at the September 18 meeting that the two phones had been collected over the past weekend—Saturday, the 14th, and/or Sunday, the 15th—and did not consider this as a significant point or issue because the Company does not conduct business on the weekends. According to Olivo, management never informed him of the day the phones were collected and he only learned of the date after he was fired.²⁰ Olivo was sure that Ortiz did not mention that the telephones were collected on the weekend; he just mentioned the variances in the polling data amount and the actual amount in the machine. According to Olivo, Ciezar never told him he was being suspended for collecting the telephones on the weekend.²¹

Olivo stated that his suspension was for about 2 weeks or 10 business days and he returned to work on October 1, 2002; he was called to the main office along with Edwin Lopez. Olivo said that he and Lopez were given discharge letters by Felip Madera, the company controller and human resources manager, in the presence of Juan Burgos and Carlos Ortiz.

Olivo recalled that Lopez asked Madera for the results of the investigation that supposedly had been undertaken. According to Olivo, Madera said that he was not required to give him any explanation or information.

Olivo stated unequivocally that he took no money from the Respondent's phones, nor did he ever tamper with or vandalize them.

b. Edwin Lopez's suspension and discharge

Lopez testified that he was employed by the Respondent from October 1, 2000, to September 19, 2002, as a technical service worker whose duties were to maintain, repair, and collect pay phones located along a designated route; his usual hours were 7 a.m. to 3 p.m. on Monday through Friday.

Lopez stated that his routes covered the Bayamon area of the island and included about 300 pay telephones; Lopez said he averaged around 30 collections per day but daily had about 40–50 trouble tickets to deal with because Bayamon was a high drug use area and experienced a substantial amount of tampering and vandalism of the phones. Accordingly, his supervisor, Juan Burgos, daily would assist him in servicing and collecting the phones on his route.

¹⁹ Olivo noted that Burgos, on other occasions, added so-called "good" phones to his scheduled collections. Olivo seemed to be saying that adding phones that the Company deemed in need of collection was routine.

²⁰ Olivo initially said that he later learned that the two phones had been collected over the weekend of September 14–15 from Edwin Lopez who said Ciezar told him about those suspect collections. Upon examination by the Respondent's counsel on cross-examination, Olivo later changed his testimony regarding how he became aware of the collection of the phones over the weekend in question. Olivo stated that someone other than Ciezar told Lopez of this allegation. Olivo, I would note, seemed not to understand the question posed to him by the Respondent's counsel on this score.

²¹ Olivo stated that after being advised of his suspension on September 19, he privately spoke to Ciezar for about 10–15 minutes, mainly asking him why he was being suspended. According to Olivo, Ciezar said that he was initiating an investigation of the missing money and if the investigation went okay, Olivo would be returned to work.

Lopez said that he spoke with his coworkers about terms and conditions of employment with the Respondent on two occasions around the first week of July 2002. Lopez said the first meeting occurred at a liquor store (Essuelve Liquor Store) and the other in the company parking lot.

Regarding the liquor store meeting, Lopez said that around the first week of July, he met with a number of employees, fellow technicians,²² and discussed a number of work-related concerns after work. According to Lopez, the employees each discussed their feelings, arguments, and problems with the Company on topics such as vacation; overtime hours; vehicle conditions; and uniforms. They also discussed a promised but unfulfilled raise; problems they had with the Company in meeting their National Guard commitments; and their annual evaluations which were not current or even being done in some cases.

Regarding the promised pay raises, Lopez stated that Ciezar had promised the technicians a raise if by a certain time they were able to install and collect new phones purchased by the Company as a result of the acquisition of another phone company. As to overtime pay, Lopez said the employees rarely saw this on their paychecks. Lopez stated that the Respondent required the technicians to put in for vacation 3 months in advance, but when the time arrived the vacation was not allowed.

At this meeting, Lopez stated that he spoke with one of the participants, Luis Burgos, whose father-in-law belonged to a union, and asked him to supply him with information about unions in general and how they could be brought in to represent them. Lopez said that the techs hoped to coordinate with Luis Burgos so that by the next day they would have information about unions.

Lopez related what transpired at a second meeting of the techs, this time in the company parking lot.²³ According to Lopez, the night before he had spoken to Luis Burgos who told him he had contacted a union representative. So, at the meeting, he informed the group that a union representative was going to be meeting with them and authorization cards were going to be distributed and picked up; that this was to occur during the week.

Lopez stated that the techs also again discussed the promised salary increase. Consequently, the techs decided that he (Lopez) and Angel Olivo would arrange to speak with Ciezar in the afternoon about the promised raise.

Lopez noted that Juan Burgos participated in the meeting and, in fact, stated that he was going to support them with management, that the techs would have all the backup from him that he could possibly muster.

Lopez said that later that day he met with Ciezar and explained what happened at this meeting. According to Lopez, he returned to the Company after completing his route duties and, per company procedure, was about to deliver the collected money and equipment to the

²² Lopez identified employees Oscar Sanchez, Ariel Bertram, Juan Burgos, Miguel Sandro (phonetic), Angel Olivo, and Luis Burgos as participants in the group discussion.

²³ Lopez thought this meeting took place on July 8, 2002. He identified Juan Burgos, Ray (last name unknown), Sandro Matos, Ariel Bertram, Oscar Sanchez, Angel Olivo, Daniel (last name unknown), and Luis Burgos as participants.

vault and return the company car. However, he was intercepted by Carlos Ortiz who instructed him merely to lock the car and accompany him to the administrative offices to meet with Ciezar.

When Ciezar arrived, Lopez stated that Ciezar told him he was upset with the group (of techs) and with him (Lopez); that he did not understand Lopez's attitude. Ciezar went on to say that if he (Lopez) were not in agreement with company policy, he could go work for Pan American (another telephone company); that the Respondent's doors were open for him on the day he wanted to leave.

Lopez stated that he told Ciezar that his (Ciezar's) attitude was based on claims by the techs relating to money but that the claims were fair for the employees. According to Lopez, Ciezar told him that he had nothing else to say to him, that he (Lopez) could resign whenever he wanted and, in fact, told him to leave the Company's premises. Lopez said that as he was about to leave, Ciezar told him to watch out and not bring a union in.

Lopez stated that his last day of work at the Company was September 19, 2002. He related the circumstances leading to his suspension on that day and ultimate termination on October 1.

On the afternoon of September 18, Lopez said that he was approached by Juan Burgos who told him to report to Carlos Ortiz. He met with Ortiz and Burgos, who stayed for only a short time, at Ortiz's desk in the administrative area.

Ortiz proceeded to accuse him of collecting a telephone on the previous Sunday—the 15th—and that there was \$60 missing. According to Lopez, Ortiz said that he suspected that someone was using an illicit program that allowed him to access the phones—that someone was using a "clandestine" line to collect the phones. Lopez said that Ortiz asked him if he (Lopez) had collected the phone on Sunday and he said he had not.

Lopez said that he then asked to speak to Ciezar for an explanation of this clandestine line allegation, whereupon Ortiz responded to him that Ciezar was listening to the conversation on the speaker phone. Then all of a sudden, according to Lopez, Ciezar appeared in the office but said nothing. Ortiz then announced that the conversation had ended, that he had nothing more to say. Lopez said that he left Ortiz's office but he observed Ortiz, Ciezar, and Juana Burgos speaking at Ortiz's desk as he was leaving. Lopez added that he was never given any documentation regarding the alleged improper collection of the phones in question.

On September 19, Lopez reported for work at the usual time but was told by Juan Burgos that he and Olivo were not assigned any work and were going to be suspended. Lopez said that he and Olivo waited until 7:45 a.m. before going to Burgos to ask what was going on. According to Lopez, Burgos said that they would find out very soon. Lopez and Olivo then decided to speak with Felip Madera who was in the administrative office area; Madera directed them to his office. At around 8 a.m., Juan Burgos was paged to Madera's office; a meeting with Olivo and Lopez, along with Madera and Burgos, thereupon took place.

Lopez stated that he and Olivo were given their 10-day suspension letters²⁴ in that meeting and were told by Ortiz that the Company was going to investigate the missing money and that management suspected there was an illicit and clandestine polling program involved.

²⁴ Lopez's suspension letter is contained in GC Exh. 17. The letter indicates that he was being suspended because of irregularities in several telephones on his route; and that after an

Continued

Lopez said that the suspension was to end on October 1. However, when they reported for work, he and Olivo were not dispatched to their routes as were the other techs. Lopez said that he and Olivo waited around 40 minutes and then asked Juan Burgos what was going on, but received no response. Accordingly, Lopez and Olivo went to Madera's office, and Lopez again asked what was going on. According to Lopez, Madera ordered him to get out of his office, to wait outside. A few minutes later, Juan Burgos was paged to Madera's office.

Lopez said that he and Olivo considered themselves together in whatever was going on and decided to go to the conference room where Ortiz, Madera, and Juan Burgos were gathered. There, the two were each given a dismissal letter.

Lopez said that he asked Ortiz for the results of the promised investigation. However, Madera responded, saying that he did not have to provide the results because a local law—Law No. 80—protected the Company and he had no right to any investigation.²⁵ Lopez said that he disputed Madera's statement, telling him that there must be a police complaint because if the money was missing, then surely a robbery (theft) had taken place. According to Lopez, Madera declared that the meeting was over and that he had nothing more to tell him.

Lopez noted that he was never given any documentation by management regarding the allegedly missing money or any other irregularities on his route. Ortiz only told him that the amount in question was \$60 and the telephone in question was located at a local mall on his route; the specific telephone was not identified by Ortiz in any of the meetings with him and other managers.

The Respondent called Juan Burgos, Carlos Ortiz, and Ralph Ciezar, who provided the Respondent's defense to the charges in question.²⁶

Juan Burgos testified that he began working for the Respondent around January 13, 2000, initially as a supervisor of company vehicles and phone card machine maintenance. He later became a service technician with an assigned route and was promoted to supervisor of the service technicians in January 2002 by Ciezar,²⁷ the position he currently holds with the Respondent.

Burgos stated that he supervised Sanchez and Lopez. As to Olivo, Burgos said that at one time Olivo was a supervisor but was demoted to be his (Burgos') assistant, working with him in the vault.²⁸ Burgos said that Olivo and the employee he described as being in charge of the vault, Carlos Escalara, had access to the vault room.²⁹ Burgos noted, however, that he (Burgos) was responsible for counting every cash box and every key given to the service

investigation, he would either be reinstated or additional discipline would be imposed.

²⁵ Lopez's dismissal letter (GC Exh. 18), like Olivo's, makes a reference to Law No. 80. However, this law or rule was not explained or elaborated on at the hearing.

²⁶ Madera, an admitted supervisor, did not testify at the hearing. No reason was given by the Respondent for his nonappearance.

²⁷ I note that Burgos had some difficulty in remembering his dates during questions by the Respondent's counsel.

²⁸ Burgos volunteered that Olivo was to him hurt by the demotion and seemed resentful of him at times, but there never were hard feelings or fights between them. Burgos acknowledged that in spite of Olivo's demotion, they enjoyed a good working relationship.

²⁹ Escalara did not testify at the hearing.

technicians each morning. Burgos stated that Escalera, a vault worker, was responsible for counting the cash boxes and keys in the afternoon and that Escalera delegated certain employees, Edwin and Ivan and even the technicians to assist him with his duties.³⁰

5 Burgos stated that it was not unusual for Escalera and he to add telephone keys to the ring made up the day before based on the technicians' identification of phones requiring collections. According to Burgos, Olivo, as his assistant, also added keys because he was authorized to work inside the vault³¹ and pick any of the keys he needed.

10 Regarding the keys, Burgos confirmed that he had access to the master key that could open most of the Company's phones.

Burgos also confirmed that on occasion he socialized with Olivo, Sanchez, and Lopez at a liquor store. However, Burgos denied that they ever spoke to him about unions and he never told Ralph Ciezar that the three men were looking to get a union at the Company. Burgos, however, acknowledged that Lopez complained about his salary at the liquor store and once while the employees were gathered in the company parking lot. Burgos also acknowledged that he spoke to Ciezar about Lopez's complaints regarding his salary.

20 Burgos stated that he knew Sanchez and was his supervisor. According to Burgos, Sanchez was a problem employee, one he described as "negative" in that he refused to do assignments; was argumentative and spoke harshly to him using profanity; and, on one occasion, almost provoked a physical confrontation with him.³² Burgos said he had to address Sanchez's on-the-job behavior on many occasions and that Sanchez's aggressive tendencies caused problems sometimes with other workers. Burgos said that he did not report Sanchez's behavior to upper management, except perhaps on one occasion indirectly to Ortiz.³³ Burgos also stated that he never gave Sanchez a written reprimand.

30 Burgos acknowledged that he had heard Sanchez complain about his vacation's being cancelled in July 2002 because another tech was called to active duty with the National Guard. According to Burgos, Sanchez said that he would rather not take his vacation at all if he could

³⁰ No last names of Edwin and Ivan were provided by Burgos.

35 ³¹ To illustrate the point, Burgos compared Olivo's route summary report, dated September 16, 2002 (R. Exh. 12), which showed Olivo's phone collections for September 17, with Olivo's key log sheet for September 17, which indicates the telephones he actually collected. Burgos noted that two phones on the key log sheet—7269332 and 7269054—were not on Olivo's route summary sheet and were obviously added to the collection's list but not by him (Burgos), because he stated he did not give Olivo the keys to the phones on September 17. Burgos volunteered that these two phones contained very low amounts, \$8.50 and \$8.25, respectively, and did not need collection unless they were broken. Burgos also noted that these two phones were also not on Olivo's route summary sheet dated September 18, 2002 (GC Exh. 5). Burgos admitted that with respect to R. Exh. 12, he had not seen the particular document before the hearing and that Olivo may have been given the document by Ortiz.

45 ³² Burgos related a particular incident involving Sanchez's behavior that was particularly upsetting to him and almost led to fisticuffs between the two. However, Burgos said that they made up with each other.

50 ³³ Burgos said that often his unpleasant encounters with Sanchez evidently made him visibly sad and, on occasion, managers like Ortiz would ask what the matter was about. Burgos said that he would only say that he had had an argument, not identifying the employee, but had taken care of the problem.

not have his requested dates. So Sanchez opted not to take his vacation. Burgos felt that the Company did not cancel Sanchez's vacation.

Burgos stated that he did not himself terminate Sanchez but acknowledged that Carlos Ortiz asked him what he (Burgos) thought about Sanchez whose productivity was lessening, and his completion of trouble tickets was minimal. Burgos also acknowledged that he was told by management that Sanchez was going to be discharged but was at no time told exactly why Sanchez was being terminated.

Burgos said that when Lopez (whom he supervised) was suspended, he was asked to handle his route by management.

However, according to Burgos, Lopez told him on the day of his suspension that whatever he (Burgos) might discover on the route, to shut up about it. Burgos said that Lopez did not elaborate but that he was surprised by Lopez's request.

Burgos said that after and during Lopez's suspension, he was working the Bayamon (Lopez's) route and checking phones for proper operation which entails putting a quarter in the phone, noting that in a properly operating phone, the coin should be returned if he does not make a call; if the quarter does not return, then there is a problem. Burgos said that he opened a phone that did not return the quarter and discovered that the coin return chute was broken and that a substantial number of coins—about \$25 or \$30 worth—that the computer would not register were jammed in the telephone. Burgos bagged up the coins and returned the chute to the Company's warehouse parts clerk who said the chute was broken. Burgos said he showed the broken part to Ciezar. According to Burgos, he later discovered two other phones on the Bayamon route that were similarly damaged and rigged to retain the coins.

Burgos opined that the damage to the coin returns could only be accomplished by someone with keyed access to the phones; vandals could not have done what he considered an "inside job." Burgos stated that he brought the damaged parts from all three phones and the coins he collected back to management, specifically Ciezar, and told him that the affected phones were on Lopez's route.³⁴

Burgos noted that after discovering the tampered with phones on Lopez's route, he (eureka-like) connected his earlier comments—to shut up about what he might see on the route—but never told management (Carlos Ortiz or Ralph Ciezar) about Lopez's comments.

³⁴ The Respondent produced what Burgos said was one of the actual damaged coin chutes and three photographs of each damaged chute—Respondent's X, Y, and Z. I made notes on the exhibits indicating the top of the coin return mechanism and the bottom part with a plastic part cut out. The photos were of damaged coin chutes, according to Burgos, taken from the three phones he found tampered with on Lopez's route. Burgos admitted he did not create any official documentation regarding the three phones that were tampered with; his reports to management were verbally delivered. Burgos was able to identify the actual phone and its location for the part associated with R. Exh. 2. I deemed the actual part to be too bulky for admission into the record. Burgos could not recall with accuracy or confidence whether the damaged parts associated with Exhs. X and Y were discovered during Lopez's 10-day suspension. Burgos, however, said that he did not discover the phone represented by R. Exh. Z was tampered with until November 20, 2002, much after Lopez's discharge. Burger also admitted that the Respondent does not maintain any inventory of damaged phones or phone parts.

Burgos stated that during their time with the Company Lopez and Olivo had no "irregularities" in the performance of their jobs and that he had no part in any investigation of the two that may have been instituted by the Company.³⁵

Carlos Ortiz testified that he serves as the Respondent's manager in charge of general company operations, including its computerized telephone system and related programs and employee discipline. Ortiz said he has served in this capacity for over 5 years.

Ortiz explained the circumstances leading to his decision to suspend and later terminate Olivo and Lopez.

Ortiz said that he regularly monitors the collections of the technicians basically by comparing their route summary reports and key log sheets with collection reports associated with the tech and his specific route.³⁶ Ortiz says that he also attempts to verify the accuracy of the amounts contained in these documents. In the event of a discrepancy of \$10 or more—a cash box discrepancy—he commences an investigation. Ortiz stated that he first checks the computer system for possible glitches; if no computer-related problem is detected, he issues a trouble ticket for the technician to determine and fix the problem with the telephone in question.

Ortiz directed himself to his investigation of two phones on Olivo's route that were "short," that is, had less money collected than that which his computerized polling indicated was deposited.

According to Ortiz, he reviewed the September 17, 2002 collection report pertaining to Olivo's route which showed that two specific telephones were \$19.30 and \$32.85 short. Ortiz then undertook his investigation to determine the reason for the shortages, first by running a computer check of each phone utilizing a program that, inter alia, gives accounting by date and time of all calls made on that phone, the amounts in the cash box, and its last collection.

Ortiz stated that his investigation showed that each of the two Olivo telephones had been collected on Sunday, September 15, 2002, and contained no money. The computer indicated that before the "collection," one phone contained \$27.70 and the other \$41.50.³⁷ Ortiz stated that this was not normal because the Company did not conduct business on Sunday.

³⁵ Burgos also stated that he did not participate in any decision to discharge either Lopez or Olivo but was present when at least Olivo was suspended and knew then that a discrepancy in the collection of one of Olivo's phones was the reason therefor. Burgos claimed to have no knowledge of the specific reason(s) for Olivo's discharge.

³⁶ See R. Exh. 13, a representative collection report; this specific report is associated with Olivo for September 16, 2002. The collection report is based on data that the vault room employee (Escalara) enters into the Company's computers on the day the cash boxes are returned by the technician.

³⁷ Ortiz identified R. Exhs. 10 and 11 as the computer generated reports that showed the date indicating the irregularities in question regarding Olivo's phones. The phones in question are identified by telephone number and a specific location on the route, namely an Esso Service Center and a Super Kleen (laundromat).

Regarding Lopez, Ortiz stated he discovered a similar cash box discrepancy for one of the phones on his route. Specifically, Ortiz said that he discovered that again on Sunday, September 15, between 1:08 a.m. and 8:02 p.m., a Lopez phone was evidently collected and \$49 removed from the cash box.³⁸

Ortiz said that he reported his findings to Ciezar on September 17, explaining to him that he felt that the Olivo and Lopez phones had been collected on Sunday. Ciezar also reported to Ciezar that when he printed the route summary reports for Olivo's route on September 16 (Monday), the two phones in question were not among those to be collected by him.³⁹ Ortiz said that he examined Olivo's collection report for September 16 and noted that the two phones in question had been collected by him that day in the amount of \$8.40 and \$8.60, respectively.⁴⁰ The result was a shortage of \$19.30 and \$32.85, respectively, for each phone. Ortiz said that he also questioned how Olivo could have gotten the keys to collect these phones from Escalara, the vault employee, without them having been included on his summary reports.

Ortiz also said he also discovered from Lopez's collection report for September 17,⁴¹ a similar situation involving the one phone in question on his route, mainly, that \$13.95 had been collected on that date, a low amount, and that this amount reflected a discrepancy or shortage of \$35.30 when compared to the \$49.25 reported as having been deposited in the telephone in question on the previous Sunday, the 15th.

Ortiz stated that Ciezar instructed him to speak to both Olivo and Lopez about the problem.

Ortiz met with Olivo alone in the afternoon on September 18 in his office and presented to him his evidence that the phones had been collected on Sunday and that there was a \$32 shortage. Ortiz told Olivo that he (Ortiz) would have to investigate the matter, that management required this.

Ortiz said he also met with Lopez⁴², also alone, that same afternoon and explained the situation to him regarding the shortage in question for one of his phones and in likewise said he would have to investigate the matter further.

Ortiz noted that after Lopez left at around 4 p.m., he (Ortiz) met with Ciezar and they decided after discussing the matter to suspend Olivo and Lopez because of the seriousness of the matter. On the next day, the 19th, Ortiz said he spoke to Burgos and instructed him to bring Olivo and Lopez to him, not to issue them keys or cash boxes for collection until he had spoken with them.

Ortiz met first with Olivo on the 19th and said that he told Olivo he had a problem with his phones, and what explanation did he have. According to Ortiz, Olivo said repeatedly that he did not know anything about the discrepancies. In the end, Ortiz said that he told Olivo he was

³⁸ Ortiz identified R. Exh. 6, a computer generated report for a telephone located on Lopez's Bayamon route at Canton Mall that showed evident removal of the money in question.

³⁹ See R. Exh. 12.

⁴⁰ Ortiz noted that telephones with less than \$40 are or should not be collected.

⁴¹ See R. Exh. 14, Lopez's collection report printed by Ortiz on September 17, 2002.

⁴² Ortiz said that at his meetings with the two, he allowed them to look at the reports he used on the computer.

suspended for 10 days and gave him a suspension letter signed by Burgos,⁴³ Olivo's supervisor.

After Olivo left, Ortiz then met with Lopez and essentially asked him the same questions he asked of Olivo. According to Ortiz, Lopez said that he had no answer for the discrepancies regarding the one telephone on his route, in spite of questioning by Ortiz on the subject.⁴⁴ Ortiz then notified Lopez that he was suspended, pending an investigation, and gave him his suspension letter.

After the meeting with Lopez, Ortiz said that he saw Olivo in Ciezar's office. Shortly, Ciezar called him to the office and asked him to explain to Olivo what was the issue and problem. Ortiz said that he gathered from this conversation that Ciezar had asked Olivo how he obtained the key to the two phones he collected from Escalara when they were not on his summary report of phones to be collected that day.

According to Ortiz, Olivo told Ciezar that on his own volition, he had taken the keys because he thought those phones were in need of collection, that he had said nothing to Burgos about taking the keys on the 17th.⁴⁵

Ortiz said that during the 10-day suspension, he racked his brain for an answer to the shortages but could only conclude that the collections were made on Sunday (the 15th) and the keys were returned sometime the following Monday. Ortiz concluded that Lopez and Olivo were the culprits and, after the completion of his investigation of the matter during their 10-day suspension, decided to terminate them on October 1, and that the discrepancies were the only reasons they were fired. Ortiz confirmed that Burgos was assigned by him to cover Lopez's route in Bayamon⁴⁶ during his suspension.

Regarding Sanchez, Ortiz admitted that he was responsible for his termination. Ortiz explained that Sanchez was terminated for a number of reasons. First, he was insubordinate and disrespectful to Burgos, his supervisor, and once called him (Burgos) an S.O.B. and almost came to blows with him over a job-related matter. According to Ortiz, Sanchez also had many cash box discrepancies which he was unable to explain satisfactorily to management.⁴⁷ According to Ortiz, these were the main two reasons for firing Sanchez. However, Sanchez, in his view, was a "negative" employees who would not collect phones as required but would give no reasons for the failure and on another occasion Sanchez threatened a fellow employee who Sanchez believed was a "snitch" who reported to management. While he gave Sanchez more than five reprimands from the beginning of calendar 2000 until he was fired in July of that year,

⁴³ Ortiz said the letter date of September 10 reflects a typographical error.

⁴⁴ Ortiz stated that he queried Lopez specifically on why he collected two phones located relatively close to each other in Canton Mall with less than \$40.00 in the cash box (see R. Exh. 6 and 7) but did not collect two other phones there with \$40.30 and \$94.40, respectively. See R. Exhs. 8 and 9. Because Lopez would not give him any responses, Ortiz said he was very concerned.

⁴⁵ On rebuttal, Olivo denied that he told Ciezar this. He reaffirmed his position that Burgos gave him these keys as he had on other occasions when keys were added to his ring.

⁴⁶ Ortiz did not address any of the damage to and coins collected from phones on Lopez's route as claimed by Burgos.

⁴⁷ Ortiz said that he would speak to Sanchez on various occasions about the cash box discrepancies and seek an explanation from him. However, Sanchez would merely say there were no problems.

Ortiz conceded that none of the reprimands were written. Ortiz also noted that during the last couple of months prior to his discharge, Sanchez's production was waning because his collections were low which he felt reflected Sanchez's negative attitude toward his duties.⁴⁸

5 Regarding union activities or talk about unions, Ortiz denied that he ever participated in or attended any meetings where anything about unions was mentioned by Olivo or Lopez. Furthermore, neither Burgos nor Sanchez ever mentioned a union to him and he (Ortiz) never acted as a translator for any employee who spoke to Ciezar (who spoke no Spanish) about the subject of unions. Ortiz claimed that he was never present at any meeting with Burgos, Olivo,
10 or Sanchez while Ciezar was listening on the phone; nor did he ever meet with Lopez while Ciezar was listening to the conversation on the speaker phone. Ortiz denied being present in any meeting where Ciezar allegedly threatened Olivo, Sanchez, or Lopez.

15 Ralph Ciezar, the general manager and top executive of Telefonos Publicos, testified that he knew the alleged discriminatees, Olivo, Sanchez, and Lopez. Ciezar also acknowledged that all serious disciplines, including suspensions and discharges, had to be approved by him. Based on information provided by Ortiz, Ciezar said that he approved the suspensions of Olivo and Lopez, and ultimately their and Sanchez's discharge.

20 Ciezar specifically denied ever having met with Sanchez or Olivo and Lopez to discuss benefits and other terms and conditions of their employment with the Company. Ciezar also denied making threats or taking any reprisals against the three because they voiced their concerns regarding wages, vacations, and the like, saying any testimony to the contrary was completely false. Ciezar said that he knew of no involvement of the men in union activities.⁴⁹

25 Regarding the discharge of Olivo and Lopez, Ciezar said that he read the computer polling and collection reports provided by Ortiz and undertook some independent investigation of the discrepancies issue during the period of their suspension. Ciezar explained that during the suspension period, he contacted the manufacturers of the telephones in question to
30 determine whether a malfunction in them or their programming could cause a clearing of the phones' memory (to show a "zero" balance).⁵⁰

Contention of the Parties

35 The General Counsel contends that the Respondent's service technicians first met during the first week of July 2002 at a liquor store where they often socialized after work to discuss terms and conditions of employment at the Company. The participants at this meeting included the three alleged discriminatees—Olivo, Sanchez, and Lopez—and a number of their fellow employees, plus their friend and recently promoted supervisor, Juan Burgos. The
40 General Counsel submits that the meeting and the types of discussions—vacation times, uniforms, a promised raise, and job evaluations—in spite of any arguments and testimony to the

45 ⁴⁸ Ortiz stated that he examined Sanchez's productivity records but did not produce them at the hearing, claiming that they had been purged from the Company's records in the normal course of business.

⁴⁹ Ciezar conceded that Burgos mentioned to him on a couple of occasions that Lopez requested a raise for himself, and that ultimately Lopez's raise was given based on his approval. Ciezar claimed to have at no time met with Lopez alone to discuss his salary, and did not meet with Lopez with Ortiz acting as a translator regarding Lopez's complaints about his salary.

50 ⁵⁰ Ciezar did not indicate the answer he received from the manufacturers. I assume there was no malfunction disclosed by his inquiry.

contrary, to a certainty took place based on the fully corroborated testimony of Sanchez, Lopez, and Olivo. She also contends that the unionization process was raised and fellow tech Luis Burgos⁵¹ agreed to consult with his former father-in-law about the process.

5 In likewise, the General Counsel submits that a second meeting of the technicians, around July 8, 2002, in the company parking lot just before the techs reported for work, also took place. Again, Lopez, Sanchez, and Olivo, among other named techs and Juan Burgos, were in attendance. She notes that by this time, Luis Burgos told Lopez (and the group) that he had contacted a union whose representative would later in the week meet with them to obtain authorization cards.

10 The General Counsel contends that because the three—Lopez, Sanchez, and Olivo—participated in these meetings in a very activist way, they were discharged by the Respondent. She notes that the Respondent's hostility to the concerted activism of the three, especially their support of a union, was fairly immediate and in Sanchez's case very swift. Sanchez, she argues was fired within about 2 days of the parking lot meeting, but not before the Respondent cancelled his scheduled vacation without notice or cause, and was called in by Ciezar and threatened with an implied loss of his job.

20 The General Counsel asserts that in likewise, Olivo and Lopez also were individually called in by Ciezar, and each was told by him that if they did not like the working conditions at the Company they could leave. Lopez, in addition, was interrogated by Ciezar, who wanted to know what was happening with the employees. Then, within about 2 months, the Respondent discharged the two on what the General Counsel contends are pretexts. All in all, the General Counsel submits that the three technicians were threatened and later suspended and discharged because they engaged in concerted protected activities in violation of Section 8(a)(1) of the Act.

30 The Respondent argues that in the case of Sanchez, he was fired for good cause, mainly his lack of discipline, insubordination, and general poor on-the-job performance. As to Lopez and Olivo, the Respondent emphasizes that the two were discharged 2 months after Sanchez and only because an investigation of discrepancies between monies reported and collected from phones on their routes indicated that the phones had been tampered with by a person with keys to the phones in question. The Respondent asserts that it rightfully concluded that the culprits were Olivo and Lopez and discharged them consistent with the Puerto Rico Wrongful Discharge Act—Law 80—which permits an employer to discharge an employee for just cause.⁵² The Respondent argues that it did not discriminate against either Lopez, Sanchez, or Olivo for engaging in protected activity; that Olivo and Lopez were fired due to "dishonesty, dubious and unacceptable conduct in dealing with money that did not belong to them."⁵³

40 ⁵¹ As noted, Luis Burgos did not testify at the hearing. No reason was given for his nonappearance.

45 ⁵² Law 90, LPRA §185 et. seq. generally prohibits arbitrary and discriminatory discharges or layoffs of employees and provides for indemnification where such action is taken without just cause.

50 ⁵³ The Respondent also argues that Olivo was a supervisor within the meaning of the Act based on his duties assisting Burgos in the vault room and therefore was not covered by the Act. However, it should be noted that the Respondent asserts in its brief, at p. 3, asserts "Angel Olivo Pagan ('Mr. Olivo') and Edwin Lopez-Lopez ('Mr. Lopez') were also installers/collectors of public phones with TPPR." The Respondent does not explain this inconsistency. See also p. 6 of the Respondent's brief, Statement of Proven Facts, where Olivo's duties as a tech are briefly

Continued

As to the charge that Ciezar unlawfully interrogated and/or threatened the three with unspecified reprisals because they voiced concerns about vacations, wages, and other terms and conditions their employment, the Respondent submits that Ciezar credibly denied the allegations and in fact denied any knowledge that either of the discharged techs were engaged in union related or other concerted protected activities.

The resolution of the instant charges clearly will depend on determining the credibility issues. However, it will be helpful to discuss the legal principles applicable to the matter at hand.

The Applicable Law Regarding 8(a)(1) Violations

Employer interference, restraint, or coercion of employees who exercise their statutory right to form, join, or assist labor organizations are unlawful under Section 8(a)(1) of the Act.⁵⁴ The test under Section 8(a)(1) does not turn on the employer's motive or whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which it may be reasonably said tends to interfere with the free exercise of employee rights under the Act. *Gissel Packing Co.*, 395 U.S. 575 (1969); *Almet, Inc.*, 305 NLRB 626 (1991); *American Freightways Co.*, 124 NLRB 146, 147 (1959). Thus, it is violative of the Act for the employer or its supervisor to engage in conduct, including speech, which is specifically intended to impede or discourage union involvement. *F. W. Woolworth Co.*, 310 NLRB 1197 (1993); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995). The test of whether a statement or conduct would reasonably tend to coerce is an objective one, requiring an assessment of all the circumstances in which the statement is made as the conduct occurs. *Electrical Workers Local 6 (San Francisco Electrical Contractors)*, 318 NLRB 109 (1995). *Rossmore House*, 269 NLRB 1166 (1984), *enfd. sub nom. Hotel and Restaurant Employees Local 11 v. NLRB*, 706 F.2d 1006 (9th Cir. 1985). *Medcare Associates*, 330 NLRB 935. *Greenfield Die and Manufacturing Corp.*, 327 NLRB 237 (1998).

It is well settled that an employer's interrogation of employees concerning their union activities may be violative of the Act. *Hudson Neckwear, Inc.*, 302 NLRB 93 (1991). Among the circumstantial factors examined are the background of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985).⁵⁵ The Board has also considered other factors such as whether the questioning was by an immediate supervisor who worked closely with the employee, whether it was made in a joking tone, and whether the employee was an open, active union supporter, *Raytheon Co.*, 279 NLRB 245 (1986); *Action Auto Stores, Inc.*, 298 NLRB 875 (1990); *Dealers Mfg. Corp.*, 320 947 (1996).

described. However, be that as it may, the record discloses that Olivo was demoted from a supervisory position with the Respondent in early January 2002 and then became an ordinary service technician. Sometime in May or June 2002, he was asked by Ciezar to assist Burgos in the vault room, mainly dispatching techs with cash boxes and keys. He also performed his normal duties as a technician and covered his route accordingly. I would find and conclude that he was an employee within the meaning of the Act and that his limited assistance to an admitted supervisor is not sufficient to make him a supervisor.

⁵⁴ Sec. 29 U.S.C. §158(a)(1).

⁵⁵ The Board, however, does not mechanically apply these factors in each case. Rather, it views these criteria as useful indicia that may serve as a starting point for assessing the totality of circumstances. *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830 (D.C. Cir 1998).

Section 8(a)(1) may also be violated where an employer links terminations of employees to their union activities. *Area Metal Forms*, 310 NLRB 397, 400 (1993); and in likewise an employer may violate the Act by linking promises of improved benefits and wage increases to the employees' selection of a particular union. *Christopher Street Corp.*, 286 NLRB 253, 254 (1987).

Finally, while Section 8(a)(1) prohibits certain speech and conduct deemed coercive, employers are free under Section 8(c) of the Act to express their views, arguments, or opinions about and regarding unions as long as such expressions are unaccompanied by threats of reprisals, force, or promise of benefit. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

Section 8(a)(1) of the Act also makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act, including the right to engage in concerted activities . . . for the purpose of mutual aid or protection." 29 U.S.C. §157. The Board has held that in order to find that activities are concerted, the employee's activities must have been "engaged in with or on the authority of other employees and not solely by and on behalf of the employee himself." *Meyers Industries*, 268 NLRB 493, 497 (1984). Under the *Meyers* analysis, an 8(a)(1) violation will be found if the employer knew of the concerted nature of the employee's activity, the concerted activity was protected under the Act, and the adverse employment action at issue was motivated by the employee's protected activity. *Id.*

In *Amelio's*, 301 NLRB 182, the Board stated that in cases where unrepresented employees have allegedly been subjected to adverse actions by their employer for participation in protected concerted activities, the following analytical framework is to be employed:

The General Counsel presents a prima facie case that an employer has discharged an employee in violation of Section 8(a)(1) when the evidence shows that the employee has engaged in protected concerted activity—that is, the individual acts with or on the authority of other employees—the employer knew of the concerted nature of the activity, and the discharge was motivated by the employee's protected concerted activity. 301 NLRB at 182.

Once the General Counsel meets the burden imposed by this test, the employer assumes the responsibility of persuading the fact-finder that the adverse action against the employee would have been issued even in the absence of the protected concerted activity. *Kysor Industrial Corp.*, 309 NLRB 237 (1992), citing *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).⁵⁶

For an activity to be concerted, there must be a sharing of common interest. *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984). There must be a mutual concern upon which the employees are acting which relates to terms or conditions of employment. The same action or activity that would be protected when acting in concert with other employees would not be protected if an employee were to act in an individual capacity. In *Meyers Industries (Meyers 1)*, the Board defined concerted activity as that, "with or on the authority of other employees," as opposed to individual activity which was activity "solely by and on behalf of the employee

⁵⁶ This analysis is to be applied even in cases where pretext is alleged. *Teamsters Local 657 (Texia Productions, Inc.)*, 342 NLRB No. 59 (July 29, 2004).

himself.” *Meyers Industries, Inc.*, 291 NLRB 882, 996 (1986) (a/k/a *Meyers I*). This definition of concerted activity also “encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.” *Meyers* at 888.

In *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984), the Supreme Court made clear that the Board need not interpret the Act to give a narrow and literal interpretation of “concerted activities.” Accordingly, *City Disposal* made clear that such individual activity must be closely attenuated to the group action in order to be considered concerted. The Board in *Meyers*, citing *City Disposal*, held that “at some point an individual employee’s actions may become so remotely related to the activities of fellow employees that it cannot reasonably be said that the employee is engaged in concerted activity.” *City Disposal* at 833.

It should be noted that some ostensibly concerted activity is not protected by the Act. Generally, if the employee’s concerted conduct is accompanied by outrageous behavior or disloyal (to the employer) conduct, the employee may lose his right to reinstatement or other remedies afforded by the Act. *Alto-Shaam, Inc.*, 307 NLRB 1466 (1992), *enfd.* 996 F.2d 1219 (7th Cir. 1993), *cert. denied* 510 U.S. 965 (1993); *C-Town*, 281 NLRB 458 (1986); *Bird Engineering*, 270 NLRB 1415 (1984).

The Alleged Concerted activity

It is beyond cavil in Board law that vacation times, overtime pay, promised wage increases, uniforms, and job evaluations relate to and are a part of employees’ terms and conditions of employment and are frequent objectives of organizational and concerted activities. Discussions among employees about these concerns are necessary to further that goal. *Jeanette Corp. v. NLRB*, 532 F.2d 916, 918 (3rd Cir. 1976). Thus, “the activity of [even] a single employee in enlisting the support of his fellow employees for their mutual aid and protection is as much ‘concerted activity’ as is ordinary group activity.” *Owens-Corning Fiberglas Corp. v. NLRB*, 407, F.2d 1357, 1365 (4th Cir. 1969). Thus, individual action is concerted as long as it is engaged in with the object of initiating or inducing group action. *Cibao Meat Products*, 338 NLRB No. 134 (April 11, 2003).

In the instant case, there is little dispute that the three alleged discriminatees—Olivo, Lopez, and Sanchez—met with a number of their fellow workers on two occasions in late June or possibly early (the first week of) July at the liquor store and on July 8 in the company parking lot and discussed concerns about various terms and conditions of their employment with the Respondent. Furthermore, the employees discussed the possibility and/or desirability of union representation at both meetings.⁵⁷ I would find and conclude that the three engaged in concerted activity, that is, discussing in a group context their respective concerns about vacations, overtime pay, promised wage increases, uniforms, and job evaluations at the Respondent’s facility, and that these meetings and the discussions were had for their mutual aid

⁵⁷ I have credited the testimony of Olivo, Lopez, and Sanchez regarding the occurrence of these meetings and the topics of discussion among the employees. I found the three highly credible in their respective testimony in that they were straightforward, consistent, and forthcoming in their responses to questions from not only the General Counsel but also the Respondent’s counsel. Moreover, the Respondent does not seriously dispute that the meetings took place. The Respondent asserts that it had no knowledge of their occurrence.

and protection.⁵⁸ Hence, I would find and conclude that the three discharged employees were engaged in protected concerted activity.

The Respondent's Knowledge and Animus

A central issue in this matter is whether the Respondent's upper level managers were aware of the discharged employees' activities and their expressed concerns about their working conditions. Notably, Ciezar and Ortiz insisted that they knew nothing of the matter. However, it would be my finding and conclusion that Ciezar and Ortiz were made aware of the employees' concerns at least on July 8, and the source of that knowledge in my view was Juan Burgos, the technicians' supervisor. My reasons are as follows:

First, while Burgos denied telling his supervisors about what had transpired at the liquor store gathering and the July 8 parking lot meeting, his denials did not have the ring of truth as I heard him testify. He was clearly hesitant and seemed nervous in his denial. He seemed to be overly protective of the Company. On the other hand, based on the credible testimony offered by Sanchez, Lopez and Olivo, Burgos was certainly in attendance at both meetings and evidently, based on his (Burgos) own testimony, socialized with the techs regularly. Additionally, on July 8, the three testified that when Ciezar showed up for work, the techs with Burgos in attendance quickly dispersed. It seems likely based on later events that Ciezar's suspicions were aroused and, in all likelihood, he called Burgos into find out what was afoot.⁵⁹ Not surprisingly, based on Burgos' revelations, Ciezar, before the day had ended, called Sanchez, Lopez, and Olivo in for individual meetings whereat the issue of working conditions and their satisfaction with the Company was broached by Ciezar.

My belief that in all likelihood Burgos told Ciezar about the techs' concerns about their working conditions and their plans to seek the assistance of a union is buttressed by Burgos' evident antipathy for Sanchez, whom he testified was insubordinate and disrespectful to him. It is more than mere coincidence in that light that Ciezar called Sanchez in first on July 8 and broached the issue of working conditions with him and then, a mere 3 days later, Sanchez was terminated.

In agreement with the General Counsel, I would find and conclude that the Respondent gained knowledge of what had transpired at the July 8 parking lot meeting most likely and plausibly by and through its supervisor, Juan Burgos.

Turning to the individual meetings Sanchez, Lopez, and Olivo said they had with Ciezar on July 8, while Ciezar denies they occurred, I do not credit his denial. The three discharged technicians each testified credibly with clarity and elaboration about their respective encounters with Ciezar, who essentially told each man that if he did not like the working conditions at the Company—the subjects of the parking lot meeting—he could leave the Company or report the matter to the local department of labor.

⁵⁸ Even if, as the Respondent contends, Lopez may have discussed his concerns about his own raise at some point in his employment, this does not negate the collective nature of his activities.

⁵⁹ It should be noted that Ciezar testified that he spoke with Burgos daily. Burgos was his eyes and ears with regard to the techs.

I would find and conclude that Ciezar unlawfully interrogated and/or threatened the three in individual meetings with him. In Sanchez's case, I would find that he was unlawfully threatened with an implied loss of his job if he did not like working conditions at the Company. Lopez was interrogated indirectly when Ciezar expressed how upset he was with the techs and Lopez personally, and invited him to work for another company if he did not like the working conditions at the Respondent's facility; and Lopez was threatened with an unspecified reprisal by Ciezar who told him to watch out and not bring a union in.

As to Olivo, I would find that he was unlawfully interrogated and threatened when in the aftermath of Ciezar's knowledge of the parking lot meeting he asked Olivo what was happening and told Olivo that if he were dissatisfied with the working conditions, he could go to the local labor department and seek vacations and a raise.

I note that given the circumstances of these employees' encounters with Ciezar, his statements were patently coercive and intended to chill the three known activists in the exercise of their statutory rights. First, each man had that same day met with fellow workers and expressed their concerns collectively about working conditions at the Company. Ciezar, the top official at the Respondent, evidently having determined (probably through Burgos) that the three were ringleaders, called each individual man to the administrative offices and made the statements each attributed to him. Because each man was treated almost identically, the suggestion of a plan to intimidate and coerce not only the three but also all of the techs emerges. I note that the Respondent had a fairly small work force and the words of Ciezar's actions probably and reasonably got out. That Sanchez was fired a few days later probably made the intimidation complete. I would find and conclude that Ciezar's statements to Sanchez, Lopez, and Olivo constituted unlawful threats and interrogations, all in violation of Section 8(a)(1) of the Act.

Directing myself to the discharges of the three, the Respondent essentially argues that each man was terminated for legitimate reasons unrelated to their having engaged in protected concerted activity.

Regarding Sanchez, the Respondent asserts that he was historically a low producing, disrespectful, and insubordinate employee who had numerous verbal reprimands relating to his performance as a technician. It was for these reasons that the Respondent says he was terminated, not his having engaged in protected activities of which it was unaware. The General Counsel contends that the reasons are simply pretexts for discharging Sanchez. I would agree with the General Counsel. Notably, while the Respondent claims that he was essentially a poor employee, they produced no documentation of what I view as serious misconduct. Cursing one's supervisor, refusing to perform assignments, and other inappropriate conduct as testified to by the Respondent's managers seemingly would merit a written reprimand, a suspension if not termination. However, all of this was tolerated for reasons not clear. Burgos stated he was upset with Sanchez's behavior, most particularly his disrespectful conduct, but aside from a long face never really complained of his conduct to management.⁶⁰

⁶⁰ Sanchez disputed management's accusations against him, stating that he had never been verbally reprimanded, let alone written up for his job performance or attitude. He stated he received all of his raises and once was made an employee of the month and given a raise for the award by Ciezar.

However, as noted, Sanchez was terminated within 3—perhaps 4—days of the Respondent's discovery that he was involved in the meeting with the techs. Notably, his termination letter does not give any reason for his discharge, nor was there any evidence of his running afoul of management in the days or even weeks preceding his discharge. The only event of significance in my view was Sanchez's involvement in a meeting with his fellow workers who were unhappy with working conditions at the Company. I believe his discharge by the Respondent was based on that knowledge

Thus, the timing of his discharge, along with the Respondent's undocumented assault against Sanchez's on-the-job performance, as well as the animus against him and his activity exhibited by Respondent's chief manager's unlawful interrogation of and threat to him, convinces me, in agreement with the General Counsel, that the reasons for his discharge asserted by the Company were pretextual. I would find a violation of the Act regarding Sanchez's discharge.

Olivo and Lopez were both fired for basically the same reasons—so called “irregularities” in the collection of telephones on their respective routes. Not to put too fine a point on the matter, they were basically fired for stealing by the Respondent.

It is or should be obvious to all that stealing from one's employer is a dischargeable offense. Here, the Respondent's managers discovered irregularities in the collection data for phones on both Olivo's and Lopez's routes. The documents adduced at the hearing by the Respondent clearly establish that the phones were “short” and that they may have been collected on Sunday, a nonwork day, by someone who had keyed or computer access to the phones and the cash boxes.

While shortages and even surpluses are seemingly a regular event in the Company's collections of its phones, the Respondent only responds to irregularities in the amount of \$10 or more dollars, plus or minus. The shortages attributed to Lopez and Olivo certainly exceeded the standards. The Respondent's manager, Ortiz, credibly explained his calling the two on the carpet as it were, to inquire about the shortages. While one could argue that his decision to suspend them pending an investigation was rather extreme, I cannot substitute my judgment for his in view of what he viewed as an unexplained, possible theft of company property. Given this, I do not agree with the General Counsel that the suspensions were sufficiently motivated by the Respondent's knowledge of Lopez's and Olivo's having engaged in protected activity in July. I would find and conclude that the Respondent has met its burden, at least with respect to Lopez's and Olivo's suspension, to show that this action was not motivated by their having engaged in protected activity and, in any case, the Respondent would have suspended them pending an investigation irrespective of their having engaged in concerted protected conduct.

However, the discharge of the two presents a different matter in my mind. As noted, Ortiz confirmed that he told both men that the Company would investigate the matter of the shortages and pending the results, they would either be reinstated or disciplined, the Respondent's suspension letters state as much.

My research has not revealed that the Board has not enunciated any specific rules or criteria for what would constitute an employer's adequate investigation of purportedly wrongful acts or behavior of its employees where concerted activity is involved. However, the Board has held that an inference of animus and discriminatory motivation may be warranted under all the circumstances of a case, including the employer's failure to investigate adequately the alleged misconduct leading to the discipline or discharge. *6 West Limited Corp.*, 330 NLRB 527 (2000); *Visador Co.*, 303 NLRB 1039 (1991).

Here, the issue for me is whether Olivo and Lopez received what may be described as an adequate good-faith investigation of the missing money by the Respondent, untainted by what I have determined to be its knowledge of their having engaged in protected activities and my finding of its animus against those activities.

I would conclude they did not. I note that Ortiz, the manager charged with “investigating” the shortage, acted first on his strongly held assumption that the two took the money on Sunday or in the intervening days when he discovered the irregularities. Ortiz, admitting that other employees had access to the keys to the phone, nonetheless did not make inquiry of them. Thus, Burgos and Escalara, for example, a supervisor and the vault assistant, respectively, were given a pass on the suspected theft even though Ortiz thought the thefts were possibly the work of insiders. This at the least is discriminatory. Additionally, it seems that if one were honestly investigating a theft of company property accomplished by a technician’s possibly utilizing what Ortiz felt was some surreptitious or clandestine technical process, that is, someone hacking into the company computers, common sense would dictate a query of all persons who could theoretically accomplish the theft. In my view, an honest and basic investigation would include an interview with all the techs. Perhaps an examination of phone collections records of the techs would disclose Saturday or Sunday collections on their routes and other shortages and irregularities, which would tend to exculpate Olivo and Lopez.

There were only about nine technicians in the Respondent’s employ. So this would not have been a particularly arduous task for Ortiz, who claimed to be racking his brain for a solution to the problem. Incredibly, in spite of a potential for system-wide intrusion into the system, he focused his attentions exclusively on Lopez and Olivo whom he promised a legitimate investigation of the matter. In the end, both men were shown the door without any word of explication. I believe that any employee accused of theft, a serious and often disqualifying charge for future employment where money handling is involved, deserves something more, especially where the two here denied adamantly that they had committed the theft and had no previous reports of irregularities in their collections.

But for purposes of the Act, employees, in my view, deserve quite a bit more from a promised investigation where they have engaged in protected activities and received a hostile response from an employer for their activities. Here, I believe that the Respondent’s investigation, such as it was, was inadequate by design and had a preordained conclusion, that is, that Lopez and Olivo were to be deemed guilty of theft and were going to be terminated.

I would find and conclude that their termination was motivated by their having engaged in protected concerted activity on July 8 and that the supposed investigation of them for theft was simply a cover or subterfuge—a pretext—for the Respondent’s delayed and hostile response to their having engaged in protected activities. In my view, Olivo and Lopez were unlawfully terminated.⁶¹

⁶¹ *Hewlett Packard Co.*, 341 NLRB No. 62 (March 29, 2004), where the Board recently held that the employer’s failure to conduct a full and fair investigation into the employee’s alleged misconduct constituted evidence of discriminatory intent. At fn. 2.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

By interrogating and threatening its employees with unspecified reprisals because they had engaged in concerted protected activities and other activities for their mutual aid or protection, the Respondent has violated and is violating Section 8(a)(1) of the Act.

3. By discharging Oscar Sanchez, Edwin Lopez, and Angel Olivo because they engaged in activities for their mutual aid and protection, mainly meeting and discussing among themselves and other employees mutual concerns such as wages, vacations, and other terms and conditions of employment at the Respondent's facility, the Respondent has violated and is violating Section 8(a)(1) of the Act.

4. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has violated Section 8(a)(1) of the Act, I shall recommend that it be required to cease and desist therefrom and from engaging in like or related unlawful conduct, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily terminated Oscar Sanchez, Edwin Lopez, and Angel Olivo, I recommend that the Respondent be ordered to offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits they may have suffered from the time of their discharge to the date of the Respondent's offer of reinstatement. I shall further recommend that the Respondent be ordered to expunge from its records any reference to their unlawful termination, to give them written notice of such expunction, and to inform them that its unlawful conduct will not be used as a basis for future personnel actions against them. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶²

ORDER

The Respondent, Telefonos Publicos De Puerto Rico, Inc., its officers, agents, successors, and assigns, shall

⁶² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) Discharging employees, or in any other manner discriminating against them with regard to their hire or tenure of employment or any term or condition of employment, because they engage in protected concerted activity by meeting and discussing with their fellow employees mutual concerns such as wages, vacation, overtime, evaluations, or other terms and conditions of employment.

(b) Interrogating and threatening employees with unspecified reprisals because they engage in concerted protected activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Oscar Sanchez, Edwin Lopez, and Angelo Olivo full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for losses they suffered by reason of the discrimination against them as set forth in the remedy section of this Decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Oscar Sanchez, Edwin Lopez, and Angel Olivo, and within 3 days thereafter notify them in writing that this has been done and that it will not use the discharges against them in any way.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Carolina, Puerto Rico facility copies of the attached Notice marked "Appendix."⁶³ Copies of the Notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 8, 2002.

⁶³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C. August 18, 2004

Earl E. Shamwell Jr.
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge employees, or in any other manner discriminate against them with regard to their hire or tenure of employment or any term or condition of employment, because they engage in protected concerted activity by meeting and discussing various mutual concerns such as wages, vacation, and other terms and conditions of employment.

WE WILL NOT interrogate or threaten our employees with unspecified reprisals because they engage in concerted protected activities, including meeting and discussing among themselves wages, vacations, and other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, offer Oscar Sanchez, Edwin Lopez, and Angelo Olivo full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for losses they suffered by reason of the discrimination against them, less any net interim earnings, plus interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Oscar Sanchez, Edwin Lopez, and Angel Olivo, and within 3 days thereafter notify them in writing that this has been done and that we will not use the discharges against them in any way.

TELEFONOS PUBLICOS DE PUERTO RICO, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

525 F. D. Roosevelt Avenue, La Torre de Plaza, Suite 1002, San Juan, PR 00918-1002
(787) 766-5347, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (787) 766-5377.